

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Application of	)	
	)	
Verizon Hawaii Inc., Bell Atlantic Communications,	)	
Inc. (d/b/a Verizon Long Distance) and Verizon	)	
Select Services Inc.,	)	
	)	
Transferors,	)	
	)	
and	)	WC Docket 04-234
	)	
Paradise MergerSub, Inc.	)	
	)	
Transferee,	)	
	)	
For Consent to Transfer Control of Verizon Hawaii	)	
Inc. and Certain Assets and Long Distance Customer	)	
Relationships Related to Interstate Interexchange	)	
Telecommunications Service in the State of Hawaii	)	
	)	

COMMENTS OF PACIFIC LIGHTNET, INC.

I. Introduction and Summary

Pacific LightNet, Inc. (Pacific LightNet) respectfully submits these comments in response to the Commission's July 15, 2004 Public Notice in the above-captioned proceeding.

Pacific LightNet (1) opposes the proposed transfer of control of those certain assets by and between Verizon Hawaii, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance) and Verizon Select Services Inc. (collectively Verizon Hawaii) and Paradise MergerSub, Inc., a holding company wholly owned by investment funds associated with The Carlyle Group (Carlyle), as well as (2) requests that the Commission

reject or remove from streamlined treatment the applicants' June 21, 2004, Consolidated Application for Consent to Transfer Control (application). Further, if it should deign to approve the applicants' request to transfer Verizon Hawaii's assets to Carlyle, the Commission should impose stringent conditions on the terms of the transfer. Pacific LightNet believes that, absent conditions, the applicants' proposed application raises material public interest and national security concerns—especially since Carlyle's proposed leveraged transaction threatens (1) to diminish the efficiency of Hawaii's only incumbent network's operations support system (OSS or back-office); and (2) an increase in the rates businesses, consumers, and competitors will pay for the new entity's service.

## II. Backgrounds of the Parties

### A. *Verizon Hawaii*

Verizon Hawaii came into existence little more than four years ago when this Commission approved the merger application submitted by GTE Corporation (GTE) and Bell Atlantic Corporation (Bell Atlantic),<sup>1</sup> and the Hawaii Public Utilities Commission (HPUC) approved the Hawaii portion of this transaction, which essentially rendered GTE and its downstream affiliate, Hawaiian Telephone Company Incorporated (GTE Hawaiian Tel), a wholly-owned subsidiary of Bell Atlantic.<sup>2</sup> GTE Hawaiian Tel was then, and still is, the only incumbent local exchange carrier in Hawaii, serving approximately 700,000 access lines.

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<sup>1</sup> See, *In re Application of GTE CORPORATION, Transferor, and BELL ATLANTIC CORPORATION, Transferee; For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, 15 FCC Rcd 14032 (rel. June 16, 2000).

<sup>2</sup> See, the HPUC's November 17, 1999, Decision and Order No. 17377, Docket No. 98-0345, in *In the Matter of the Application of GTE CORPORATION AND BELL ATLANTIC CORPORATION For Expedited Approval to Transfer Control GTE Corporation to Bell Atlantic Corporation*.

As part of the state merger proceeding in Hawaii, GTE and Bell Atlantic's merger application emphasized that the pooling of their respective resources would achieve dramatic long-term goals in the then relatively new environment of competitive telecommunications, allowing them to (1) remain strong providers of basic telecommunications services in their current territories; (2) become fully integrated telecommunications service providers, offering packages voice, data, long distance, video, wireless, and other advanced services; and (3) establish a national presence, which would enhance their ability to compete for business and residential customers.<sup>3</sup>

GTE and Bell Atlantic further contended that, from a public interest perspective, consumers would benefit from their merger, because the merged entity would (1) achieve parity with the then four companies and alliances capable of providing a full range of telecommunications packages on a nationwide basis;<sup>4</sup> (2) allow GTE's data affiliate to access Bell Atlantic's large urban customer base; and (3) combine their respective customer bases to achieve the traffic volume necessary to construct a national long-distance network.<sup>5</sup> The merged entity, they also claimed, would be more efficient and more responsive to the newly competitive marketplace, achieving annual merger synergies amounting to \$4.5 billion.<sup>6</sup> In essence, GTE and Bell Atlantic committed to the promise of a new and improved, bigger and better *status quo* in their respective current markets—which, of course, included Hawaii.

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<sup>3</sup> See, HPUC Decision and Order No. 17377, at p. 5.

<sup>4</sup> These entities were (1) MCI/WorldCom/MFS/UUNet; (2) AT&T/TCI/Teleport; (3) SBC/PacTel/SNET/Ameritech; and (4) Sprint/Sprint Spectrum.

<sup>5</sup> See, HPUC Decision and Order No. 17377 at p. 5.

<sup>6</sup> See, HPUC Decision and Order No. 17377 at p. 10.

The merged entity from this earlier proceeding today conducts business as Verizon Communications, the largest provider of wireline and wireless communications in the United States.<sup>7</sup> Further, GTE Hawaiian Tel now conducts business as Verizon Hawaii, Inc., which includes providing local telephone services to businesses and consumers, and resale and interconnection services to competitors. Moreover, in bringing about the “efficiency” promises of the 1999/2000 merger between GTE and Bell Atlantic, Verizon Hawaii’s corporate parent essentially eliminated Verizon’s Hawaii’s back office—removing it and key employees to centralized facilities in other states. In fact, Verizon Hawaii currently provisions access loops and interstate access circuits from OSS facilities in Durham North Carolina; unbundled network element (UNE) loops from Coeur d’Alene, Idaho; and frame relay circuits from San Angelo, Texas.

*B. Pacific LightNet*

A facilities-based competitive local exchange carrier, Pacific LightNet competes with Verizon Hawaii for switched services throughout the state of Hawaii, as well as provides dedicated transport private line services, intrastate private line and switched services, including inter-island toll services. Pacific LightNet has invested millions in its network to compete with Verizon Hawaii and its affiliates, which benefits Hawaii’s businesses and consumers in the form of competitive rates and the deployment of advanced telecommunications services. In providing its competitive services, Pacific LightNet necessarily requires interstate access services and wholesale interconnection services, which includes loops and other services, from Verizon Hawaii, and, therefore,

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<sup>7</sup> According to its website, Verizon Communications, a Fortune 20 company, boasts approximately \$68 billion in annual revenues. At the time of its proposed merger with GTE, Bell Atlantic’s total revenue for 1997 was \$30 billion.

depends on the incumbent's back-office systems, procedures, and processes to provide Pacific LightNet's customers with timely, affordable, and seamless service. In a nutshell, Pacific LightNet has spent several costly and frustrating years contending with, and otherwise resolving, back-office issues with Verizon Hawaii, an obviously experienced carrier with bottle-neck control of Hawaii's only incumbent network.

Consequently, Pacific LightNet has also moved to intervene in the state proceeding relating to the proposed merger between Verizon Hawaii and Carlyle, contending, primarily, that (1) Carlyle, an investment fund, has failed to propose a credible plan for funding, designing, implementing or staffing the incumbent network's back-office, which, long-term, will result in a diminished incumbent network, and (2) the proposed transaction threatens businesses, consumers and competitors with increased rates for the new entity's service.

*C. The Carlyle Group*

As it says in the parties' transfer application, Carlyle is not a telephone company. It's an international private equity investment firm that specializes in the leveraged-buyouts of companies that tend to be heavily regulated, using the target firm's assets as collateral to finance the transaction. It is widely reported that Carlyle's investments result in an annual 35% return to investors, and that Carlyle generally holds its investments on a short-term basis.<sup>8</sup> As The Carlyle Group states in its own releases:

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<sup>8</sup> Carlyle, for example, acquired the second-largest shipping line serving Hawaii in February, 2003 for \$300 million, but, after little more than a year, sold it to Castle Harlan for \$650 million, which sale, according to the Business Wire, yielded a return of more than five times invested equity. See, the July 8, 2004 *Business Wire* release, "Carlyle Closes Sale of Horizon Lines to Castle Harlan" at [http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news\\_view&newsId=20040708005484&newsLang=en](http://home.businesswire.com/portal/site/google/index.jsp?ndmViewId=news_view&newsId=20040708005484&newsLang=en). Carlyle's "proven" approach, or "proven track record of successful investments" apparently means acquiring struggling or undervalued companies and selling them for a huge profit.

The Carlyle Group is a global private equity firm with nearly \$18 billion under management. Carlyle generates **extraordinary** returns for its investors by employing a **conservative**, proven, and **disciplined** approach. Carlyle invests in **buyouts**, real estate, **high yield**, venture capital, and **turnaround** in North America, Europe, and Asia, focusing on aerospace & defense, automotive, consumer & industrial, energy & power, healthcare, technology & business services, telecommunications & media and transportation. Since 1987, the firm has invested \$8.6 billion. The Carlyle Group employs more than 500 people in offices in 12 countries. For additional information, visit <http://www.thegroup.com>. (emphasis added)

While Carlyle has no experience owning and operating a local exchange network or other form of telecommunications common-carrier, Carlyle has disclosed its affiliation with WCI Cable, Inc. (WCI), “an FCC licensee that owns and operates a submarine fiber-optic cable connecting Alaska with the continental U.S., as well as certain terrestrial facilities in Alaska, all of which it operates on a non-common carrier basis.”<sup>9</sup> And, other than this disclosed affiliation with WCI, Carlyle claims to have “extremely limited interests in the telecommunications industry.”

Recent press accounts, however, note that Carlyle remains in the running to acquire Guam Telephone Authority (GTA), the incumbent LEC serving Guam<sup>10</sup> and, based upon information and belief, Carlyle may also be in negotiations to acquire Alaska Communications Systems, Inc. (ACS), the largest common carrier serving Alaska, including the incumbent LEC network in Anchorage, Alaska.

ACS, for its part, has previously engaged in a somewhat unique “loan” arrangement in supporting Carlyle’s acquisition of WCI, which, during June, 2002, was a debtor-in-possession in a Chapter 11 bankruptcy proceeding in Portland, Oregon.

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<sup>9</sup> See, Verizon Hawaii’s and Carlyle’s June 21, 2004 transfer application at p. 8.

<sup>10</sup> See, the July 3, 2004 Honolulu Star-Bulletin at <http://starbulletin.com/2004/07/03/business/story1.html>.

Carlyle, acting through one of its investment funds, Neptune Communications, LLC (Neptune), failed to timely disclose that it granted ACS a three-year option to purchase WCI's so-called Alaska Longhaul Assets in consideration for ACS' agreement to loan Neptune \$15 million. Neptune required the loan to finance, in part, the purchase price of the debtors' stock. As part of the same "loan" transaction, moreover, Neptune granted ACS the unfettered right to approve all pricing for all capacity sales—to third parties—greater than one year in length, as well as agreed to place all revenue from such capacity sales into a reserve account pending ACS' decision as to whether it would exercise its option. Neptune's arrangement with ACS was belatedly, if not painfully, disclosed in the middle of the Bankruptcy Court's reorganization plan confirmation hearing, resulting in no small controversy with the Bankruptcy Court and separate filings with this Commission.<sup>11</sup>

Thus, whatever its "extremely limited interests in the telecommunications industry," Carlyle's affiliation with WCI, its pending transaction relating to acquiring Hawaii's only incumbent network, and its apparent efforts in acquiring GTA and ACS, reflect a looming strategic interest in developing a Trans-Pacific network to serve areas where the United States military has a significant presence. Indeed, the United States Department of Defense and all other Federal Executive Agencies (collectively DoD/FEA) have moved to intervene in the HPUC proceeding, citing, among other reasons, the

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<sup>11</sup> See, the June 20, 2002 Chandalar Communications Corporation's Response to Neptune Communications, LLC's Petition to Deny Application in FCC File No. ITC-T/C-20020422-00199, and July 11, 2002 Informal Complaint and Informal Request for Commission Action of Notesan Pty Ltd. Regarding Violations of the Act and the Rules by WCI Cable, Inc., Neptune Communications LLC, and Alaska Communications Systems, Inc. For the record, the undersigned notes that he served as counsel to both Chandalar Communications Corporation and Notesan Pty Ltd. in these respective filings, as well as attended and participated in the Bankruptcy Court's plan confirmation hearing from June 11 through 14, 2002. Based on information and belief, ACS subsequently forgave the \$15 million "loan" to Neptune.

essential nature of telecommunications to “the nation’s safety, security, federal governmental operations and military readiness.”<sup>12</sup>

III. Applicable Law Relating to this Proceeding and the Applicants’ Failure to Demonstrate that the Proposed Transaction is in the Public Interest

In adopting the streamlined procedures relating to proposed transfers of control applications, the Commission retained the ability to apply additional scrutiny to applications raising public interest concerns.<sup>13</sup> Specifically, the Commission sought to ensure that public interest concerns, including the promotion of competition in the local exchange markets, were adequately protected by the new streamlined rules.<sup>14</sup> Applicants bear the burden of demonstrating that the proposed transaction is in the public interest. The public interest standard is a broad, flexible standard, encompassing the "broad aims of the Communications Act." These "broad aims" include, among other things, the implementation of Congress' "pro-competitive, de-regulatory national policy framework" for telecommunications, "preserving and advancing" universal service, and "accelerating rapidly private sector deployment of advanced telecommunications and information technologies and services."<sup>15</sup>

As was indicated previously, Carlyle’s proposed leveraged transaction threatens (1) to diminish the efficiency of Hawaii’s only incumbent network’s operations support

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<sup>12</sup> The DoD/FEA’s July 12, 2004 filing in HPUC Docket No. 04-0140 also notes its “major customer” status.

<sup>13</sup> In the Matter of Implementation of Further Streamlining Measures for Domestic Section 214 Authorizations, CC Docket No. 01-150, 17 FCC Rcd 5517; 2002 FCC LEXIS 1455, at para. 35 (rel. March 21, 2002).

<sup>14</sup> Id. at para. 44.

<sup>15</sup> See, *Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries, Memorandum Opinion and Order*, 12 FCC Rcd 19985, 20063, para. 2 (1997).



system (OSS or back-office); and (2) an increase in the rates businesses, consumers, and competitors will pay for the new entity's service. Verizon Hawaii's corporate parent dismantled Hawaii's only incumbent network's back office, and the transferee, Carlyle, has provided no credible or economically sensible plan for re-establishing and staffing that back-office.<sup>16</sup>

For example, Pacific LightNet deploys circuits purchased from Verizon's interstate access tariff, FCC No. 14, throughout its network, and Verizon currently processes those orders in Durham, North Carolina. The applicants have provided no explanation for how they intend to replicate or outsource the back-office functions currently used by Verizon Hawaii's customers—without creating pressure to increase rates. Moreover, the applicants have made no assurances that, if the proposed transaction is approved, the newly-acquired customers will enjoy the same rates, terms or conditions as those currently offered under Verizon's FCC tariffs. For large Hawaii customers such as Pacific LightNet, there are, in many instances, no viable alternatives to Verizon Hawaii's access services, short of constructing duplicative facilities.

Pacific LightNet believes the proposed transaction will serve to diminish competition by replacing a slow-moving, but experienced company, with a private equity fund that, whatever its strategic ambitions and proven track record in churning investments, has no operating experience and no credible plan for designing and reassembling Hawaii's only incumbent networks back office.

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<sup>16</sup> In Carlyle's proposed leveraged transaction, the change in ownership will—at a time of rising cost of debt in the capital markets—flip Verizon Hawaii's debt/equity ratio from 80% equity and 20% debt to 20% equity and 80% debt. It's also likely that, with Carlyle in the driver's seat, Hawaii's rate-payers could, owing to back-to-back merger proceedings, end up paying the bill twice for building the Hawaii incumbent's back office without obtaining any commensurate benefit.

IV. Conclusion

Pacific LightNet opposes the applicants' proposal to transfer control of Verizon Hawaii to Carlyle. Applicants bear the burden of demonstrating that the proposed transaction is in the public interest, and they have not met this burden. At a minimum, the proposed transaction warrants removal or rejection from the streamlined process, which will allow for further investigation of the professed benefits and likely detriments of the proposed transaction.

Dated July 29, 2004.

Respectfully submitted,

PACIFIC LIGHTNET, INC.

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